IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3970 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL LAVJIBHAI NARANBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR BD KARIA for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 15/03/2007

ORAL JUDGMENT

1. With the consent of the learned advocates appearing for both the sides, the matter is finally heard.

2. The petitioner has preferred the petition for challenging the order passed by the Deputy Collector and its confirmation thereof by the Tribunal whereby, the order dated 29.04.2003 passed by the Mamlatdar for issuance of the occupancy certificate is quashed and set aside.

3. Heard Mr. Karia, learned counsel for the petitioner and Mr. Chhaya, learned AGP for the State Authorities. Respondent No.4, though served, has chosen not to appear.

4. Upon hearing the learned advocate appearing for both the sides, it appears that the principal contention raised on behalf of the petitioner is that when the Deputy Collector heard the matter being Appeal No. 1/04-05, though the petitioner was joined as a party, no notice was served and consequently, no opportunity of hearing was given to the petitioner. Therefore, the order is in breach of principles of natural justice. It has been further submitted that such question was also agitated before the Tribunal. When the Tribunal examined the merits of the matter, it has taken the view that the order passed by the Deputy Collector does not deserve to be interfered with on the aspects of delay. The Tribunal has relied upon the endorsement, but

has not clearly recorded that the notice was served and thereafter, the petitioner has chosen not to appear.

5. Under these circumstances, it appears that as such, the order passed by the Deputy Collector can be said as in breach of the principles of natural justice.

6. At this stage, Mr. Chhaya, learned AGP under the instructions of Mr. V.B.Makwana, Deputy Mamlatdar, Mamlatdar's Office, Halvad, states that since there is no satisfactory record for service to the petitioner and since the complaint is made of no hearing given to the petitioner, the Deputy Collector shall give opportunity of hearing to the petitioner and shall pass a fresh order. He further submitted that all the contention may be kept open for judicial scrutiny by the Deputy Collector in the proceedings of the Appeal.

7. In view of the above, the order of the Deputy Collector, which is impugned in this petition would not survive.

8. However, it appears that there was delay in preferring the revision before the Tribunal and when this Court considered the matter for the first time on 07.03.2007, the following order was passed :

> "Mr.Karia, learned Counsel for the petitioner, states that the petitioner is ready to pay cost for compensating the delay as it may deem fit by this Court, if the Court is inclined to consider the matter.
>
> In view of the above, **Notice returnable on 15.3.2007.** The petitioner to deposit an amount of Rs.5,000/-, on or before 14.3.2007, towards probable cost of the respondents for compensating the delay."

9. Mr. Karia, learned counsel for the petitioner states that the amount has been deposited on 09.03.2007 and he has no objection if the amount is directed to be appropriated towards the cost for compensating the delay or default on the part of the petitioner for not preferring the revision before the Tribunal within stipulated time limit.

10. In my view, as there is a justifiable grievance for non-observance of the principles of natural justice, more particularly when the petitioner had purchased the property and he was to be directly affected by the outcome of the decision of the appeal, therefore, the Tribunal could have taken lenient view by examining the aspects as to whether the default on the part of the petitioner in not preferring the revision before the Tribunal can be compensated by awarding suitable cost. It appears that the same is not examined by the Tribunal accordingly.

11. In view of the aforesaid peculiar

circumstances, when the Deputy Collector is ready to give the opportunity of hearing to the petitioner and is to pass a fresh order, I find that if the default on the part of the petitioner in not preferring the revision within the stipulated time limit is compensated to the respondent by awarding suitable cost, it would meet with the ends of justice.

12. Under the above circumstances, and in view of the aforesaid declaration made by the learned AGP, the impugned order passed by the Deputy Collector and its the confirmation thereof by the Tribunal are quashed and set aside on condition that the petitioner shall pay the cost of Rs. 5,000/- to the respondent authority for compensating the delay caused in preferring the revision before the Tribunal. As the amount is already deposited by the petitioner with this Court, the respondent State Authority shall be at the liberty to withdraw the said amount from this Court through the office of Government Pleader.

13. It is further directed that the Deputy Collector shall give the opportunity of hearing to the petitioner as well as other parties to the proceedings of Appeal No. 1/04-05 and he shall pass a fresh order in accordance with law as early as possible within a period of six months from the receipt of the order of this

Court. It is made clear that the rights and contentions of both the sides in the proceeding of the appeal shall remain open.

14. The petition is disposed of in terms of the aforesaid directions with no order as to costs. D.S. permitted.

(JAYANT PATEL, J.)

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